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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

N. K.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES et al.,

Real Parties in Interest.

B265918

(Los Angeles County
Super. Ct. No. CK77718)

ORIGINAL PROCEEDING: Petition for Extraordinary Writ is denied.

Jones & Randall, Michael Randall for Petitioner.

Office of the County Counsel, Mary C. Wickham, Interim County Counsel,
Dawyn R. Harrison, Assistant County Counsel, Tracey F. Dodds, Principal Deputy
County Counsel for Real Parties in Interest.

INTRODUCTION

N.K., the mother of two daughters, M.K.¹ and K.K., ages six and five years old respectively (children), has filed an extraordinary writ petition pursuant to California Rules of Court, rule 8.452.² She seeks to set aside a July 29, 2015 order made at an eighteen month review hearing (§ 366.22) that set the proceedings for a Welfare and Institutions Code section 366.26 permanency planning hearing (“setting order”).³ The children had been removed from her custody 23 months earlier. She contends substantial evidence does not support the setting order and the court’s failure to apply the relative placement preference was an abuse discretion. We conclude substantial evidence supports the orders and findings and, accordingly, deny the petition.

The children were declared dependents of the court on November 7, 2013 because of mother’s history of mental and emotional problems, mother fed them food from trash cans and dog food, the home was in a filthy and unsanitary condition, and the children were dirty and emitted a foul odor. Custody of the children was taken from mother, and the Los Angeles County Department of Children and Family Services (department) was ordered to provide mother reunification services.

An 18 month review hearing was held on July 29, 2015. The court found that reasonable services had been provided but the children could not be returned to mother’s custody because the risks had not been eliminated or substantially ameliorated. The court stated: “There were serious issues of neglect that brought us here this time as well as a dependency case earlier that was terminated, and then unfortunately the children were brought back before the court for neglect and mental health issues as well. They were

¹ M. was a former court dependent, in 2009 and 2010. When she was four days old, she was found to be suffering from dehydration, hyperbilirubinemia, and hypothermia. Mother had limited ability to address the issues, exercised poor judgment, and displayed bizarre behavior. M. was returned to mother’s custody, and the case was terminated.

² All further references to rules are to the California Rules of Court.

³ All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

serious neglect issues. . . . I did not hear in mother’s testimony, nor do I have any evidence in front of me, [that] the mother has really addressed those issues such that the children can be well cared for in her care. [¶] . . . [T]he court does not see evidence that the larger issues of parenting about how to take care of children and take care of their home such that they are not neglected, . . . not eating . . . inappropriate food and that the house is clean and that they have the type of supervision and attention that they need, that has not yet been addressed by the mother.” All the experts agreed that mother was not ready to care for the children on her own. Moreover, mother’s visits were only two hours per week and still had to be monitored. “So . . . it is not appropriate at this time to return the children to her care.” The court terminated reunification services and set the matter for a selection and implementation hearing (§ 366.26) on November 3, 2015. The court ordered the suitable placement order to remain in effect.

Substantial Evidence

1. Custody

Substantial evidence supports the determination that placement of the children with mother would create a substantial risk of detriment to the children.⁴ (§ 366.22, subd. (a) [the court shall return the child to parental custody unless the court finds that return would create a “substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child”].)

The March 17, June 17, and July 29, 2015 reports, two assessment reports by the court-appointed clinical psychologist, and correspondence from mother’s therapist,

⁴ In reviewing a challenge to the sufficiency of the evidence to support the juvenile court’s findings and orders, we determine whether substantial evidence, contradicted or uncontradicted, supports them, reviewing the record in the light most favorable to the court’s determinations and drawing all reasonable inferences to support the findings and orders. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We do not reweigh the evidence: fact and credibility determinations are the province of the trial court. (*Ibid.*)

document that mother presented a substantial risk of detriment to the children because of her own extensive cognitive difficulties, chronic in nature (chronic poor judgment), the weakness of parent-child bonding, mother's inability to consistently properly interact with the children as displayed during monitored visits, and her failure to progress to unmonitored visitation in the two years since the children were detained from her custody.⁵ Mother minimally interacted with the children during visits. She let them eat food dropped on the ground, imposed her feelings and fears on the children, talked to them about adult subjects instead of engaging them in conversation about school and friends, could not control their acting out behaviors, talked on the telephone, leaving the children to their own devices, and failed to provide supervision when it was necessary. The social worker stated, "mother's interaction[] with the children is limited and she as well as the children requires a lot of prompting and redirecting. Mother does not take the initiative to plan activities for the visits or ask for assistance from the social worker to provide age appropriate activities for her to engage with the children." "[A]t times[,] mother appears to be in a world of her own and unable to stay on task." Two privately-retained, board certified clinical neuropsychologists, a court-appointed clinical psychologist, and her own therapist assessed mother, and they all concluded that she struggled significantly with executive functioning, which limited her ability to parent, and that the children should not be returned to her care. Her therapist concluded it would be necessary for a nanny and parent-child therapeutic services to assist mother in day to day child rearing tasks and chores in order to insure a safe and nurturing home for the children.

The foregoing evidence amply supports finding that, at the time of the hearing, mother was not able to provide proper care and supervision, meet the children's daily needs, or provide a safe and sanitary home environment.

⁵ Mother and the children had more positive interactions when they were in the highly structured setting of Parent-Child Interactive Therapy, where mother was provided real time guidance and direct feedback while interacting with the children.

2. Reasonable Services

Substantial evidence supports the finding mother was provided with reasonable services. “When a child is removed from a parent’s custody, the juvenile court ordinarily must order child welfare services for the minor and the parent for the purpose of facilitating reunification of the family. (§ 361.5, subd. (a).)” (*Tonya M. v. Superior Court* (2007) 42 Cal. 4th 836, 843.) The record should show the parent was offered “services designed to remedy those problems [that led to the loss of custody], maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult.” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) “In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) (Accord, *In re Julie M.* (1999) 69 Cal.App.4th 41, 48.)

The social worker interviewed mother concerning her progress, perspective, and wishes. Mother was provided with monitored visits. The social worker who monitored visits gave mother direction and assistance to enable mother to play the parental role. The social worker obtained regular updates from the visitation monitor concerning mother’s interaction with the children. The social worker obtained progress reports from mother’s treating therapists. At mother’s therapist’s request, the social worker promptly arranged for mother’s individual therapist to observe one of mother’s visits. Recommendations were obtained from the court-appointed clinical psychologist concerning visitation and services that could aid mother to reunify with the children. Mother was provided with in-home therapy. She also received the Parent-Child Interactive Therapy recommended by the court-appointed psychologist. While there may have been a delay in ordering the Parent-Child Interactive Therapy, the delay was not prejudicial, because the therapy focused only on improving parent-child interactions and

attachment, not the larger issues of neglect that needed to be resolved before the children could safely be returned to mother's custody. The department provided the court with reports on such matters as visits, therapy, and mother's and the children's circumstances. The department investigated extended family members for placement and to be visitation monitors, as well as providing them with visits. This is substantial evidence reasonable services were provided.

Abuse of Discretion

Mother's contention the court erred in failing to place the children in accordance with the relative preference set forth in section 361.3 is without merit, because the preference does not apply in this case. "The relative placement preference . . . gives 'preferential consideration' to a request by a relative of a child who has been removed from parental custody for placement of that child. ' "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.' (§ 361.3, subd. (c)(1).) The preference applies at the dispositional hearing and thereafter 'whenever a new placement of the child must be made' (§ 361.3, subd. (d).)" (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 854.) As no new placement needed to be made, the preference was inapplicable.

In any event, placement with the maternal great aunts was investigated by the department twice, in March and in July 2015. In May, they were also assessed to determine if they could be visitation monitors. After consideration by the court of the department's reports, placement was denied. We review the July 29, 2015 custody order⁶ for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Custody determinations are not disturbed in a dependency proceeding in the absence of an

⁶ "An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed." (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.)

arbitrary, capricious, or patently absurd exercise of discretion. (*Id.* at pp. 318-319.) The juvenile court's determination was not an abuse of discretion.

Interviews with the maternal aunts and the children revealed children did not want to reside with the great aunts. The great aunts had not established a relationship with the children, did not appear to be bonded to the children, and were too busy to become more involved. The children did not like the great aunt who had visited and they had never met the other great aunt. The great aunts did not know what the case issues were. They believed the children did not need to be protected from mother. This is substantial evidence the maternal great aunts were not in a position to assume the parental role and it was not in the children's best interest to place them in the maternal great aunts' home. (See *In re Lauren R.* (2007) 148 Cal.App.4th 841, 855 [the court must assure a proposed placement with a relative is in the child's best interest].) Accordingly, there was no abuse of discretion.

DISPOSITION

The extraordinary relief writ petition is denied.

KIRSCHNER, J.*

We concur:

KRIEGLER, P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.